

ADMINISTRATIVE PANEL DECISION

Philip Morris Products S.A. v. yan kill, xiamensifankejiyouxiangongsi
Case No. D2024-2699

1. The Parties

The Complainant is Philip Morris Products S.A., Switzerland, represented by D.M. Kisch Inc., South Africa.

The Respondent is yan kill, xiamensifankejiyouxiangongsi, China.

2. The Domain Name and Registrar

The disputed domain name <iqos-online.com> (the “Disputed Domain Name”) is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 5, 2024. On July 5, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On July 5, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Name which differed from the named Respondent (Private Registration) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 8, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on July 8, 2024.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on July 10, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 30, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 31, 2024.

The Center appointed Catherine Slater as the sole panelist in this matter on August 7, 2024. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is part of the group of companies affiliated to Philip Morris International Inc. ("PMI"). PMI is a leading international tobacco company, with products sold in approximately 180 countries. Its products include well-known brands such as MARLBORO. PMI has developed a new product, namely a controlled heating device into which a tobacco product is inserted and heated to generate a nicotine-containing aerosol. The device is marketed under the brand name IQOS which was first introduced in Japan in 2014, and is now available in some 84 markets across the world.

The Complainant is the proprietor of various trademark registrations around the world for IQOS including: -

- Chinese Registration 16314286 for IQOS (word mark) registered on May 14, 2016;
- International Registration 1338099 for IQOS (stylized word mark) registered on November 22, 2016.

The Complainant is also the proprietor of various other trademark registrations including: -

- International Registration 1544146 for ILUMA ONE (word mark) registered on June 8, 2020; and
- International Registration 1343294 for THIS CHANGES EVERYTHING (word mark) registered on December 12, 2016; and
- International Registration 1332896 for a hummingbird device registered on June 28, 2016.

The Disputed Domain Name was registered on May 30, 2024. At the date of submission of the Complaint and at the date of this Decision, the Disputed Domain Name was linked to a website ("the Respondent's Website") which offers or purports to offer the Complainant's IQOS device. The Respondent's Website is provided in Chinese and displays the IQOS mark (in the stylized form as registered by the Complainant) as well as the Complainant's other trademark registrations set out above. On the "About" and "Contact Us" pages the provider of the Respondent's website is referred to as "IQOS China" and on the latter page a physical address is listed under the heading "CHINA AGENT ADDRESS". There appears at the foot of each page the wording, "Copyright © 2024 IQOS ILUMA ONE. Powered by IQOS ILUMA ONE." The landing page (and other pages) of the Respondent's website contains information about IQOS devices. It does not appear that the devices can be purchased online but by contacting the provider of the Respondent's website. On the "About Us" and below the information about "IQOS China" there is information appearing to offer childcare services although the majority of this information is Lorem Ipsum (placeholder text).

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name.

Notably, the Complainant contends that the Disputed Domain Name is similar to the IQOS trademark since the Disputed Domain Name reproduces that trademark and adds only the word "online".

The Complainant further contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. In this regard, it says that the Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks or to register a domain name incorporating its IQOS trademark. It says that the Respondent is not making legitimate noncommercial or fair use of the Disputed Domain Name and in fact is doing the opposite. It says the Respondent's behaviour shows a clear intent to obtain an

unfair commercial gain with a view to misleadingly diverting consumers or to tarnish the Complainant's trademarks. It says the Respondent is not an authorized reseller or distributor and does not meet the requirements necessary to be making a bona fide offering of goods or services as a reseller or distributor. It refers to the decision in *Oki Data Americas, Inc. v ASD Inc*, WIPO Case No. [D2001-0903](#) ("the Oki Data case"). It goes on to say that the Disputed Domain Name itself suggests an affiliation with the Complainant and the website prominently displays the IQOS trademark as well as other of the Complainant's trademarks, it uses the Complainant's official product images and materials while falsely claiming copyright in the same and the website identifies the provider as "IQOS China" which further serves to perpetuate the false impression of an official commercial relationship between the Respondent's website and the Complainant.

The Complainant further contends that the use to which the Disputed Domain Name has been put demonstrates that the Respondent was aware of the Complainant's trademark at the time of registration, that it is also evident that the Respondent registered the Disputed Domain Name with the intention of attracting, for commercial gain, internet users by creating a likelihood of confusion with the IQOS trademark, the use of the Complainant's trademark in the Disputed Domain Name and within the Respondent's website clearly suggests that the Complainant is the source of that website which suggestion is further supported by the use of the Complainant's official product images, marketing materials and a copyright notice.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the Disputed Domain Name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the trademark IQOS is reproduced within the Disputed Domain Name. Accordingly, the Disputed Domain Name is confusingly similar to that mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here, "-online", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the Disputed Domain Name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with

relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name such as those enumerated in the Policy or otherwise.

In fact, the Panel agrees with the Complainant that the criteria set out in the Oki Data case are not satisfied. In particular, in this matter, the Respondent is purportedly offering the Complainant's products by falsely giving the impression that it is an authorized agent of the Complainant in China ("IQOS China"). This, in itself, prevents the finding of any legitimate interests on behalf of the Respondent. In addition, the composition of the Disputed Domain Name carries a risk of implied affiliation with the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Under paragraph 4(b) of the Policy a non-exhaustive list of factors evidencing registration and use in bad faith comprises:

"(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location."

The Panel concludes that the filed evidence establishes clearly that paragraph 4(b)(iv) of the Policy applies since the Disputed Domain Name has been used to point to the Respondent's website which deliberately and falsely gives the impression that the Respondent is an authorized agent of the Complainant in China. It does that in particular through the use of the Complainant's trade marks for IQOS, ILUMA ONE, THIS CHANGES EVERYTHING and the hummingbird device, the false claim to copyright and identifying itself as 'IQOS China' and the use of the wording 'CHINA AGENT ADDRESS'. The Panel notes that while there is material upon the Respondent's website that relates to the offering of childcare services, this material is secondary to the 'IQOS related content' such that the impression is given that this material may be the remainder of a template, erroneously included, upon which the Respondent's website has been built. The

key point is that any Internet user visiting the Respondent's website is immediately met with IQOS related content which means paragraph 4(b)(iv) is satisfied.

There appears to be no plausible reason for the Respondent's selection and registration of the Disputed Domain Name other than with the deliberate intention to attempt to profit from the confusion generated with the Complainant and/or the Complainant's IQOS trademark. That this is the case is demonstrated by the use to which the Respondent has subsequently, and only shortly after registration, put the Disputed Domain Name.

The Panel finds that the Complainant has established the third element of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Disputed Domain Name <iqos-online.com> be transferred to the Complainant.

/Catherine Slater/

Catherine Slater

Sole Panelist

Date: August 20, 2024